

**Before the
Federal Communications Commission
Washington, DC 20054**

In the Matter of)	
)	
700 MHz Band Mobile Equipment)	RM No. 11592
Design and Procurement Practices)	

REPLY COMMENTS OF AT&T INC.

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AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively, “AT&T”), hereby submits its reply to the comments filed in response to a Public Notice¹ seeking input on a Petition for Rulemaking (the “Petition”) pertaining to the design and certification of mobile equipment operating in the 700 MHz band.²

SUMMARY

The National Broadband Plan proclaimed that “[t]he U.S. must lead the world in broadband innovation and investment and take all appropriate steps to ensure all Americans have access to modern, high-performance broadband and the benefits it enables.”³ AT&T agrees with this precept and believes that the rapid deployment of mobile broadband services at 700 MHz is a key step to reaching that goal. Issuing a rulemaking to explore technology mandates on 700 MHz capable devices, as the Alliance petitions, would be a step in the wrong direction, as it

¹ Public Notice, Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices, RM No. 11592 (Feb. 18, 2010).

² 700 MHz Block A Good Faith Purchasers Alliance, Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on all Paired Commercial 700 MHz Frequency blocks (filed Sept. 29, 2009) (“Petition”). The 700 MHz Block A Good Faith Purchasers Alliance (“Alliance”) consists of Cellular South Licenses Inc., Cavalier Licenses, LLC, Continuum 700, LLC, and King Street Wireless, L.P.

³ Federal Communications Commission, *Connecting America: The National Broadband Plan*, p. 29 (released March 16, 2010) (“*The National Broadband Plan*”).

would discourage investment and delay the deployment of fourth generation (“4G”) mobile broadband services. Even greater delays in 4G broadband deployment, possibly for three years, will occur if the Commission imposes the restrictions sought by the Alliance and its supporters, as 700 MHz licensees and device manufacturers await the development of new technical standards and the design and development of new devices to accommodate operations in the A-block. By any measure, such delays would frustrate the National Broadband Plan goal of making the United States the world leader in mobile broadband innovation and investment, as well as cause 700 MHz licensees to miss their build-out deadlines.

Exacerbating the situation, an A-block functionality mandate would introduce the potential for interference into all 700 MHz capable devices. At a time when wireless broadband services are exploding, consumers would be faced with the prospect of less reliable and lower quality service, thereby stifling the wireless broadband uptake. Further, accommodating the A-block could force device manufacturers to omit features that consumers have come to expect, such as the ability to operate on legacy networks or internationally. These outcomes threaten to turn back the clock on decades of progress in device form, capabilities, and cost.⁴

The Alliance and its supporters do not deny the potential interference or other adverse consequences to consumers that might occur if the Petition is granted. Rather, they justify these harms with claims that incorporating Band Classes 13 and 17 into 700 MHz capable devices would thwart competition, roaming, and public safety. In reality, neither competition, roaming, nor public safety would be harmed. Competition is flourishing in the wireless industry and will not be damaged if 700 MHz licensees deploy devices in Band Classes 13 and 17. Even in rural areas, 82.1 percent of people in the United States live in census blocks with at least three

⁴ See e.g., *The National Broadband Plan*, Sec. 4.2, p.49 (“By any measure, innovation is thriving in mobile . . . devices.”)

competing mobile telephone operators.⁵ The introduction of 700 MHz mobile networks will not decrease that level of competition, even if some 700 MHz licensees deploy devices in Band Classes 13 or 17. To the contrary, the deployment of 700 MHz services and other actions already taken by the Commission promise to increase mobile broadband competition in rural and urban areas alike.

The deployment of handsets in Band Classes 13 and 17 also does not adversely affect roaming. Customers of AT&T and other 700 MHz licensees will still need to roam on other carriers' networks, as no carrier has, or will have in the near future, 100% coverage throughout the United States. Moreover, A-block licensees can still seek roaming agreements with AT&T and other wireless carriers, whether in the 700 MHz band or on other spectrum bands. These realities are not impacted by the decisions of some 700 MHz licensees to deploy devices with Band Classes 13 or 17.

In truth, the Alliance and its supporters are more interested in protecting themselves from competition than in protecting competition. They ask the Commission to deviate from the deregulatory and technology neutral policies that have generated unprecedented innovation, investment, and growth in the wireless industry, even in the presence of uncontroverted evidence that granting the Petition would delay the deployment of 4G mobile broadband services and cause potential interference to consumers. Band Class 17 was developed by an impartial international standards body, the 3rd Generation Partnership Project ("3GPP"), as the best technical solution to eliminate the interference risk to 700 MHz capable devices operating in

⁵ Thirteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 24 FCC Rcd 6185, ¶ 104 (2009) ("*Thirteenth Report*").

Lower 700 MHz B and C blocks.⁶ In reliance on the 3GPP standards, 700 MHz band licensees designed and planned the rollout of 4G 700 MHz networks and devices to operate on those networks. The Alliance and other A-block licensees could likewise move forward under the 3GPP technical standards, including with devices incorporating Band Class 12, or with other technologies that would be allowed under existing Commission rules. Yet, they seek to alter technical standards that were objectively developed by 3GPP. The Commission has long understood that standards bodies are best suited to set the technological specifications for emerging technologies. Now, more than ever, and in the absence of a clear public interest harm, the Commission should avoid micro-managing the technology choices of wireless carriers and reject the Petition for Rulemaking filed by the Alliance.

DISCUSSION

1. Competition is not harmed by the deployment of handsets within Band Classes 13 and 17.

a. The wireless market is competitive and the deployment of handsets in Band Classes 13 and 17 will not change that fact.

The Alliance and its supporters argue that competition will be harmed if Verizon and AT&T deploy 700 MHz capable devices in Band Classes 13 and 17, respectively. Yet, rather than credible evidence of that fact, they offer only supposition and hyperbole.⁷ The Alliance and its supporters attempt to make the case for competitive harm by discussing the effect of Band Classes 13 and 17 on the 700 MHz A-block spectrum only. The relevant inquiry here is not

⁶ It is ironic that while the Alliance and its supporters attack AT&T for its actions in the 3GPP standards process, it was AT&T that initiated the work in 3GPP for **all** of the 700 MHz bands, including the A Block.

⁷ See e.g. Comments of Rural Cellular Ass'n, RM No. 11592, p. 2 (filed March 31, 2010) ("[T]he marketplace appears likely to produce results that will be detrimental to consumers and competition"); Comments of PVT Networks, Inc., RM 11592, p. 4 (filed March 31, 2010) ("[T]he potential for meaningful competition to develop in the 700 MHz band will be lost if artificial barriers based-on carrier specific equipment specifications are allowed to persist.").

whether individual competitors—in this case A-block licensees—are being harmed by the use of Band Classes 13 and 17, but whether the use of these Band Classes harms competition and consumers *as a whole*.⁸ As the Commission has long recognized, and as the D.C. Circuit has held, “[t]he Commission is not at liberty . . . to subordinate the public interest to the interest of equalizing competition among competitors.”⁹ Here the public interest favors rejecting the Petition.

The wireless marketplace is extremely competitive and Verizon’s and AT&T’s planned deployment of 700 MHz capable handsets using Band Classes 13 and 17, respectively, will not alter that state. Wireless consumers in the United States have more choices than consumers anywhere else in the world. Most Americans can choose from among at least five facilities-based carriers and almost all can choose from at least three.¹⁰ New nationwide wireless networks, such as Clearwire, are being deployed, many smaller facilities-based carriers, such as Alliance member Cellular South, are growing rapidly,¹¹ and consumers can obtain service from numerous Mobile Virtual Network Operators (“MVNOs”). Competition will further increase as the Commission moves forward with its plans enumerated in the National Broadband Plan to

⁸ Neither the 700 MHz band nor the A-block define a market from which to deduce the presence or absence of competition. Ultimately, neither consumers nor wireless providers will differentiate among mobile broadband services by spectrum band, as mobile services and features are currently, and will continue to be, offered on multiple spectrum bands interchangeably and without differentiation. The Commission itself has judged competition based upon the combined product market for mobile telephony/broadband services. See *Thirteenth Report*, ¶31.

⁹ *SBC Communications Inc. v. FCC*, 56 F.3d 1484, 1491 (D.C. Cir. 1995); *Hawaiian Tel. Co. v. FCC*, 498 F.2d 771, 776 (D.C. Cir. 1974) (internal quotation marks omitted); Report and Order, *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, ¶ 60 (1991) (“the issue is not whether AT&T has advantages, but, if so, why, and whether any such advantages are so great as to preclude the effective functioning of a competitive market”; “[i]ndeed, the competitive process itself is largely about trying to develop one’s own advantages, and all firms need not be equal in all respects for this process to work”).

¹⁰ *Thirteenth Report*, at ¶ 2 (more than 95 percent of the U.S. population lives in census blocks with at least three competing mobile operators, and more than 60 percent lives in census blocks with at least five competing providers).

¹¹ See AT&T Comments, RM 11592, n. 21 (filed March 31, 2010).

enable mobile broadband in the WCS and MSS spectrum bands. Moreover, the deployment of 700 MHz broadband services will further increase competition, even as the A-block licensees work through their technical issues and even if they choose an air interface that is different from what other operators may deploy.

Even in rural areas, consumers have choices when it comes to wireless carriers. The Commission's data demonstrates that 98.5 percent of the U.S. population living in rural counties have one or more different operators offering mobile telephone service in the census blocks in which they live, 94.2 percent live in census blocks with two or more mobile telephone operators competing to offer service, 82.1 percent live in census blocks with at least three competing mobile telephone operators, and 65.2 percent live in census blocks with at least four competing mobile telephone operators.¹² This competition follows decades of investments by wireless carriers into the design and deployment of state of the art networks over different spectrum bands. Those networks and the resulting competition that they enable will be enhanced, not harmed, when wireless carriers deploy services in the 700 MHz spectrum band or devices in Band Classes 13 and 17.

b. The Commission's technology neutral policy encourages competition.

Competition is best nourished through policies that encourage investment and innovation and allow carriers to deploy cutting edge broadband technologies and services as early as possible. The Commission has long recognized these tenets and has consciously remained technology neutral as it introduced new spectrum for mobile services, allowing carriers the freedom to deploy the technologies that best fit their business plans. The Commission has allowed carriers the flexibility to adopt the radio air interface best suited to their technology path and, other than cellular regulation adopted at the advent of the wireless industry for reasons that

¹² *Thirteenth Report*, ¶104.

are inapposite here, the flexibility to incorporate into devices only the spectrum bands that meet their business plans. For example, in terms of network technology, wireless carriers are operating CDMA, GSM, and Wi-Max networks and are planning LTE networks in the near future. In terms of device technology, T-Mobile might include the AWS band in its devices whereas AT&T may not, or Sprint might include 800 MHz SMR or PCS G-block functionality in its devices while other operators may not. This flexibility has generated substantial consumer benefits, permitting wireless carriers and device manufacturers to innovate and meet the needs of many different classes of consumers. Mandating identical functionality for all 700 MHz capable devices, as advocated by the Alliance and its supporters, employs a “one size fits all” approach that discourages differentiation and the innovation that it sows, while at the same time introducing interference concerns to the consumers’ detriment.

Granting the Alliance’s request for the Commission to mandate technology choices for 700 MHz licensees—in this case, choices that are adverse to the public interest—would also harm competition by stranding investment, thus discouraging innovation and ongoing investment. AT&T, Verizon, other 700 MHz licensees, standards bodies, such as 3GPP, and device manufacturers have worked together and invested substantial resources to facilitate the deployment of mobile broadband services in the 700 MHz band. The Alliance and its supporters would strand that investment by requiring the recreation of technical standards, redesign of 700 MHz devices, and delaying the deployment of mobile broadband services on 700 MHz spectrum. These sorts of after the fact decisions that cause whole segments of an industry to squander substantial investment will chill future outlays by those who would otherwise be inclined to invest in the future.

As referenced in more detail below, merely the issuance of a rulemaking to consider the restrictions sought by the A-block licensees would chill broadband investment, as carriers and equipment manufacturers will cease devoting resources to the development of equipment that may later be deemed noncompliant with Commission rules. Further, as explained below, granting the relief sought by the Alliance would also harm competition in mobile broadband service by delaying deployment. To the extent that some harm to competition may arise due to the inability of 700 MHz A-block licensees to acquire devices in the short term, those harms are minor when compared to the public interest harms that will occur if the Commission grants the Alliance's Petition or, worse, imposes the restrictions sought by the Alliance and its supporting A-block licensees.

c. Rural broadband deployment is not impaired by the use of Band Classes 13 and 17.

Comments from some Alliance supporters imply that the use of Band Classes 13 and 17 might result in the complete denial of mobile service for rural America.¹³ This position contradicts the claims that A-block licensees will not be able to compete with AT&T absent handset restrictions. Either there will be competition, in which case rural customers will have access to 4G mobile broadband services from AT&T and other 700 MHz licensees, or there will be no competition, in which case the A-block licensees will have a captive customer base to finance the deployment of the A-block licensees' networks and a functional device for the A-block.

In fact, substantial competition exists in rural areas and these rural areas will benefit from any rollout of mobile broadband services by AT&T, Verizon and other 700 MHz licensees. For

¹³ Comments of the Blooston Rural Carriers, RM 11592, pp. 5-6 (filed March 31, 2010); Comments of MetroPCS Communications, Inc., RM 11592, pp. 14-16 (filed March 31, 2010); Comments of PVT Networks, pp. 5-6.

example, AT&T's network covers close to 95% of the U.S. population. AT&T's coverage will increase upon approval of AT&T's acquisition of wireless assets from Verizon that are located primarily in rural areas across 18 states.¹⁴ Given that approximately 20% of the U.S. population lives in areas that are characterized as rural according to U.S. census data, AT&T alone provides coverage to the vast majority – at least three quarters – of rural America. Rural consumers will continue to benefit as AT&T expands its mobile broadband deployment in its legacy 850 MHz and 1900 MHz networks and overlays that coverage in the future with mobile broadband over 700 MHz B and C block spectrum. Other carriers will likewise expand mobile broadband deployments in rural areas across the U.S. at 700 MHz and other spectrum bands. In short, there is every reason to believe that consumers in rural areas will have access to the same mobile broadband services and innovative devices that are available to their urban and suburban counterparts, even if those broadband networks do not initially operate on A-block networks.

d. A-block licensees' actions can increase competition.

While the Alliance and other A-block licensees criticize the lawful actions of AT&T and Verizon to expand mobile broadband deployment in the 700 MHz band, the A-block licensees can take concrete action now without Commission action. Nothing precludes A-block licensees from conducting their own mobile broadband deployment trials, planning deployments, and working with manufacturers to develop devices in Band Class 12, or otherwise crafting a strategy to use whatever technology fits their business plans. Yet, neither the Alliance members nor their supporters who commented in this proceeding have pointed to any such efforts. Rather than asking the Commission to impose new rules on 700 MHz licensees after the auction,

¹⁴ See AT&T News Release, *AT&T To Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service* (May 8, 2009), <http://www.att.com/gen/press-2room?pid=4800&cdvn=news&Newsarticled=26803>.

resulting in delays in mobile broadband deployment and potentially compromised service, A-block licensees should be evaluating technologies, conducting trials, and coordinating with device manufacturers for eventual deployment of 700 MHz service, which would likely also increase mobile broadband competition.

2. Substantial public interest harms would be caused by granting the Petition and by imposing the restrictions sought by the Alliance.

a. Customers should not be forced to accept interference and forego the reliable communications to which they have become accustomed.

Wading through the myriad of arguments that the Alliance and its supporters make as to why the Commission should grant its request, it is easy to identify the public interest and public harms—just look to the evidence. The Alliance and its supporters make speculative claims with minimal evidence of competitive harm to the wireless industry or consumers as a whole from the deployment of 700 MHz capable handsets within Band Classes 13 and 17, whereas AT&T and equipment manufacturers demonstrate that forcing 700 MHz B-block and C-block licensees to adopt Band 12 would cause interference to and from TV Channel 51 and from operations in the 700 MHz D and E blocks.¹⁵

Opponents of Band Class 17 do not refute that evidence, and in fact acknowledge the interference potential.¹⁶ Cellular South, one of the Alliance members, has even offered to

¹⁵ United States Cellular, in its Comments, and the Rural Cellular Association, in an *ex parte* filing, cite to reservations that Ericsson expressed to 3GPP about the introduction of Band 17 (then called Band 15). Comments of United States Cellular Corporation, RM 11592, p. 6 (filed March 31, 2010); Letter from Todd B. Cantor, Counsel to Rural Cellular Ass’n, to Marlene H. Dortch, Secretary, Federal Communications Commission (April 9, 2010), attaching Discussion Draft, Ericsson, *On the Introduction of Band 15*, Agenda Item 6.1.2.2, 3GPP TSG RAN WG4 (Radio) Meeting #4bis (June 16-21, 2008). 3GPP considered Ericsson’s submission in the same manner that it considered all submissions, including AT&T’s submission, which United States Cellular also cites, and decided to adopt Band Class 17 due to technical concerns about interference. Ericsson’s submission itself acknowledged that “the risk of interference will always be higher for Block A holders.”

¹⁶ Comments of Cellular South, Inc., RM 11592, pp. 7-8 (filed March 31, 2010) (“Cellular South has been warned consistently by various manufacturers of 700 MHz base station and subscriber equipment that Lower Block A operation is susceptible to disruptive interference from adjacent TV operations on Channel 51.”).

relocate Channel 51 licensees to address this interference potential.¹⁷ Otherwise, the Alliance and its supporters offer no alternative or solution to eliminate the interference problem, which will continue to exist even if Channel 51 licensees are relocated, as D-block and E-block transmissions are also implicated. They merely expect other 700 MHz licensees and their customers to accept the interference or hope for the development of technologies that would minimize the interference. But, just hoping it will happen does not make it so. While A-block licensees may put blind faith in the ultimate prospect of a device that operates on all 700 MHz bands without interference, AT&T and other 700 MHz licensees should not be forced to follow that path. That path will harm America's consumers, who would be forced to wait years for the deployment of 4G mobile broadband services at 700 MHz and forgo the quality communications and reliability that they value and to which they have become accustomed, effectively degrading their wireless experience.

b. Mandating device technologies would reverse the progress in devices that has occurred in the wireless marketplace.

Forcing device manufacturers to incorporate all 700 MHz operations into a single device would raise the cost of 700 MHz capable devices and reduce the flexibility of device manufacturers (and by extension 700 MHz licensees) to deliver devices that are attractive and functional enough for mass market appeal. Motorola succinctly explains:

There is a limitation on the number of bands which can be supported. For each band class, a full transmit and receive chain is required. This would necessitate multiple filters, duplexers and other technical solutions inside devices, which will have a corresponding effect on the size, power consumption, complexity, and cost of each device. Granting the Alliance petition would limit the ability for national and international roaming as well as place certain demands on device form factor.¹⁸

¹⁷ *Id.* at p. 8.

¹⁸ Comments of Motorola, RM 11592, p. 7 (filed March 31, 2010).

The intense competition in the wireless industry has fostered the design and development of countless wireless devices,¹⁹ which cater to the needs of every type of wireless customer. At the same time, the intense rivalries between wireless carriers and between device manufacturers has led to rapidly falling prices, steadily increasing output, and ever-expanding levels of investment and innovation – all of the hallmarks of a robustly competitive marketplace. A rule that requires every 700 MHz capable device to support every 700 MHz block risks destroying this rich diversity and choice that characterizes the wireless marketplace today. For example, as Qualcomm observes, such a rule would absurdly force mobile television devices, such as its FLO-TV devices, to incorporate unnecessary spectrum band capabilities. As referenced above, one-size-fits-all approaches reduce product and service differentiation that is characteristic of a thriving marketplace, effectively reducing the incentive to innovate and invest. Such a result is adverse to the public interest and is not what the Commission envisioned when it reallocated the 700 MHz band for mobile services.

3. Delaying 700 MHz mobile broadband deployment is against the public interest.

In the National Broadband Plan, the Commission set a goal that “[t]he United States should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.”²⁰ AT&T, Verizon and other 700 MHz licensees are poised to lead the mobile broadband revolution, as their planned 4G networks are scheduled for testing or rollout in the near future.²¹ Yet, the Alliance and its supporters want AT&T, Verizon and other 700 MHz

¹⁹ There were more than 850 different certified mobile products in the United States in 2009. *The National Broadband Plan*, Sec. 3.2, p. 18.

²⁰ *The National Broadband Plan*, Goal No. 2, p. 9.

²¹ AT&T has announced its plans to begin LTE trials in 2010, with deployment beginning in 2011. See *AT&T to Deliver 3G Mobile Broadband Speed Boost* (May 27, 2009), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26835>. Verizon has announced plans to deploy its LTE network in

licensees to wait until all of the kinks are worked out of the A-block licensees' technology choices. The United States and its consumers do not have the luxury of waiting.

Alliance member Cellular South estimates an 18-24 month period to design and produce new devices that operate on all 700 MHz frequencies.²² Based upon that estimate, it is not unreasonable to assume that mobile broadband deployment at 700 MHz would be delayed by three years—one year for the rulemaking to result in an unfavorable rule and another two years to design and produce a functional handset. This timeline of course assumes no additional time for standards bodies to adopt new technical specifications or for device manufacturers to resolve interference concerns, in both instances a dubious assumption. The prospect of such a delay is enough cause to reject the Petition outright, as the United States cannot wait an additional three years to introduce 4G services at 700 MHz and still be considered a world leader in mobile broadband service. Moreover, such a delay would jeopardize the ability of 700 MHz licensees to meet the stringent build requirements imposed under Commission rules.

Merely issuing a rulemaking would result in delays in 4G mobile broadband deployment. 700 MHz licensees and equipment manufacturers have invested substantial resources into developing standards for the next generation of broadband technologies and designing the networks and devices that will operate on those technologies. Faced with the prospect of possible regulation that would strand that investment, these licensees and manufacturers will not put additional resources at risk by continuing to invest and innovate. It is irrational to assume otherwise.

2010. See *Verizon Wireless Updates Specifications For 4G LTE 700 MHz Devices* (Aug. 21, 2009), available at <http://news.vzw.com/news/2009/08/pr2009-08-21.html>.

²² Comments of Cellular South, at p. 5.

4. Granting the Petition would undermine the integrity of the auction and standards processes.

By rejecting the Petition, the Commission can take this opportunity to reassure applicants that it is committed to respecting the reasonable, investment-backed expectations of auction winners. The Commission sets the technical and operational rules for new spectrum bands *prior* to the relevant spectrum auction so that potential applicants can rely on and evaluate the capabilities and value of the spectrum based upon those rules. Auction winners deserve an expectation that their rights are clear and secure, without any anxiety that the service rules will be later altered in a manner that reduces the value of the spectrum. Changing the 700 MHz service rules after the auction in the manner sought by the Alliance would chill the investments needed for expanded broadband services, depress future auction revenues, and divert industry attention from deployment and investment to regulatory uncertainty and the legal wrangling that such uncertainty inevitably generates.

The Rural Cellular Association argues that the value of the A-block spectrum is based in part on the “assumption that affordable mobile devices would be available for use in the Lower A Block” and that the spectrum will be devalued if that assumption is incorrect.²³ In fact, the A-block spectrum is already devalued based upon concerns about interference risks associated with operations in the A-block. Prior to the auction of the Lower 700 MHz Band, the Commission advised applicants to consider the potential for interference in its 700 MHz business plans, services and facilities.²⁴ That resulted in an average auction price of \$1.13 per MHz POP for A-

²³ Comments of Rural Cellular Ass’n, p. 9.

²⁴ Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket 01-74, para. 23 (Jan. 18, 2002).

block licenses compared to \$2.65 per MHz POP for B-block licenses.²⁵ The Rural Cellular Association's argument also relies on the future unavailability of devices capable of operating on the A-block, which remains an open issue. No A-block licensee has presented evidence of any significant engagements with manufacturers to develop a device that would operate in the A-block.²⁶ Further, Band 12 as defined by 3GPP continues to be supported in the standard specifications and any licensee is free to implement Band 12 into their devices. Similarly, some licensees may choose other technologies developed by other standards bodies or even develop their own technologies under the rules.

Granting the Petition would also undermine the standards bodies that the mobile industry and the Commission have relied on for the development of technical specifications for new technologies. 3GPP, like all standards bodies, operates via an open, collaborative process. The technical standards that arise from that process are fact-based, reflecting engineering realities, and thus, are deemed reliable and stable by the wireless industry. Industry must be able to rely on those standards to design and plan network deployments. The Alliance members were free to participate in the standards bodies and present their views for the technical specifications applicable to the 700 MHz band. They failed to do so. If the Alliance and its supporters are allowed, in effect, to change those standards through after-the-fact regulatory intervention, the standards process will be undermined, which will discourage investment and future participation in the auction process.

²⁵ See Blair Levin et al., Stifel Nicolaus, *Special Focus: The Wireless World After 700MHz*, at 2, 4, Washington Telecom, Media & Tech Insider (Mar. 28, 2008).

²⁶ Cellular South disclosed that it has been warned that A-Block operations are susceptible to interference, though it is unclear if these warnings occurred as part of an effort to gauge the feasibility of designing and producing an A-block capable device. See Comments of Cellular South, pp. 7-8.

Further, technical standards, including device band classes, are best left to industry, including the standards bodies. The wireless industry is too dynamic to rely on regulatory solutions to complex technical problems.²⁷ Moreover, in an industry as competitive and dynamic as the wireless industry, carriers and manufacturers have every incentive to strike the right balance among device functionality, form, and price that are beneficial to consumers. Regulators – acting on imperfect information – are far less likely than market participants to strike the appropriate balance, despite the best of intentions. The Commission should resist the temptation to manipulate the 700 MHz service rules to change that equation.

5. Band Classes 13 and 17 do not adversely affect roaming.

Some commenters argue that AT&T's deployment of 700 MHz capable devices in Band Class 17 will negatively affect roaming—A-block licensee customers will be unable to roam on AT&T's 700 MHz network and AT&T's customers will be less likely to roam on rural carrier networks.²⁸ Both aspects of this argument are misplaced. First, AT&T's decision to incorporate Band Class 17 into 700 MHz capable devices does not affect where A-block licensee customers can roam. A-block licensees remain free to negotiate roaming agreements with wireless carriers throughout the United States, including with AT&T and other 700 MHz licensees, and to provide their customers with devices that would roam on the networks of those other wireless carriers. Second, as no wireless carrier covers 100% of the United States, AT&T's customers will still need to roam on other carriers' networks, even if they do not roam on 700 MHz A-block networks. After all, the inability of a 700 MHz B-block and C-block capable handset to roam on

²⁷ See *The National Broadband Plan*, Section 4.1, p. 42 (“Technologies, costs and consumer preferences are changing too quickly in this dynamic part of the economy to make accurate predictions.”).

²⁸ Comments of Rural Cellular Ass'n, p.9; Comments of PVT Networks, Inc., pp. 4-5; Joint Comments of NTCH, Inc. and David Miller, RM 11592, pp. 2-3 (filed March 30, 2010); Comments of United States Cellular Corporation, RM 11592, pp. 8-9 (filed March 31, 2010); Comments of MetroPCS Communications, Inc., RM 11592, pp. 11-14 (filed March 31, 2010); Comments of Triad 700, LLC, RM 11592, pp. 5-7 (filed March 31, 2010).

a 700 MHz A-block network no more impairs roaming than the inability of a CDMA handset to roam on a GSM network. In short, AT&T's device decisions do not impact the ability to roam of customers of AT&T or A-block licensees. The Commission should avoid dictating the carriers or spectrum bands on which AT&T, Verizon, or any other carrier should roam, as those decisions are best made by those carriers based on their spectrum holdings and business plans.

6. The Petition would delay the timely rollout of public safety networks that would operate ubiquitously.

Commenters claim that sanctioning the use of Band Classes 13 and 17 would adversely affect the interoperability of the future 700 MHz public safety broadband network.²⁹ AT&T challenges that assertion and to the contrary, strongly believes that imposing the restrictions sought by the Alliance will be detrimental to public safety communications. As pointed out above, merely because roaming does not occur over A-block networks does not mean that roaming will not occur. In fact, because 700 MHz coverage is likely to overlay 850 MHz or 1900 MHz coverage, public safety will still have access to 850 MHz and 1900 MHz coverage where 700 MHz coverage does not exist. Moreover, even public safety devices will not be able to operate on all commercial networks, as public safety will need to select devices that can roam on either GSM or CDMA networks. Of course, public safety is not seeking devices that operate on all networks, as the National Public-Safety Telecommunications Council ("NPSTC") has recommended that public safety devices support only Band 14, with support for all 700 MHz blocks considered merely as optional.³⁰

²⁹ Comments of Rural Telecommunications Group, Inc., RM 11592, pp. 4-5 (filed March 31, 2010); Comments of Blooston Rural Carriers, pp. 7-8.

³⁰ NPSTC, *700 MHz Public Safety Broadband Task Force Report and Recommendations*, pp. 19-20 (Sept. 4, 2009).

The A-block licensees seek to insure that public safety can utilize A-block networks, but that result could be catastrophic for public safety users if they experience the interference that led to the creation of Band Classes 13 and 17. As Motorola states, “[A]pplication of the Alliance’s recommendation would result in public safety devices that are more prone to interference.”³¹ Also, adopting the rules sought by the Alliance will delay the deployment of public safety broadband networks in the same manner as commercial mobile broadband networks would be delayed, frustrating the National Broadband Plan goal that “every first responder should have access to a nationwide, wireless, interoperable broadband public safety network.”³²

Lastly, as Motorola has explained, there is a limit to the number of bands that can be supported by any single device.³³ Requiring device manufacturers to incorporate all 700 MHz blocks (or multiple air interface technologies) into a single handset may require the removal of other features from the device, such as the ability to operate at other 850 MHz, 1900 MHz, or other spectrum bands.³⁴ This choice is not insignificant. As no carrier has 100% coverage in the United States, public safety will still need to roam on non-700 MHz networks. Thus, even if well intended, a rule that requires that all 700 MHz capable devices be capable of operating in the A-block may have unintended consequences, such as the risk of creating islands where public safety would not be able to roam.

7. The legal claims in the Petition are meritless.

The Alliance and its supporters cite Communications Act Sections 1, 201, 202, 254(b)(3), and 307(b) in search for the position that the Commission has the requisite authority to mandate

³¹ Comments of Motorola, p. 3.

³² *The National Broadband Plan*, Goal No. 5, p. 10.

³³ *Supra* note 17.

³⁴ AT&T Comments, at pp. 8-9.

the spectrum bands on which all 700 MHz devices operate and that it should invoke that authority. They are incorrect on all counts, as these Sections of the Communications Act do not grant the authority that the Alliance seeks and do not apply to the lawful actions that the Alliance seeks to remedy.

Section 1 of the Communications Act outlines the Commission's general jurisdiction over wire and radio communications, but does not authorize the Commission to mandate device technologies. Sections 201 and 202 prohibit carriers from unreasonably discriminating against their similarly situated customers. It does not regulate the effect of a carrier's actions on its competitors or customers of those competitors. Section 254(b)(3) addresses solely universal service, which clearly is not at issue here. Lastly, Section 307(b) applies only to radio station licensing, not device technical requirements. In summary, the Alliance falls short in its effort to find a legal foundation for the drastic Commission action that it seeks.

CONCLUSION

The Alliance and its supporters did not heed the Commission's advice prior to the 700 MHz auction to evaluate and plan for the interference potential associated with the A-block when bidding in the auction and designing their business plans. They did not participate in the 3GPP standards process where the 700 MHz technical standards, including the Band Classes, were adopted to reduce the interface risks associated with operations in the A-block. They do not contest that interference may occur to consumers who are forced to use devices that operate in the A-block or that such a restriction could delay the deployment of mobile broadband services. They present no information that they have invested any significant manpower or capital to work with manufacturers to develop devices that might operate in the A-block. Rather, they blame the Commission for not conducting an open auction to allow the A-block licensees to benefit from

the business plans of other 700 MHz licensees,³⁵ blame AT&T and Verizon for working within industry recognized standards bodies to develop technical specifications that benefit the industry as a whole, and now ask the Commission to impose unprecedented and overreaching regulation of the technology decisions made by standards bodies, equipment manufacturers, and 700 MHz licensees. The Commission should reject this call to issue a rulemaking to consider the proposals in the Petition.

For the foregoing reasons, AT&T urges the Commission to consider this submission.

Respectfully submitted,

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³⁵ Comments of Metro PCS, pp. 18-19.